

EXHIBIT 8

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL : MDL No. 2804
PRESCRIPTION OPIATE :
LITIGATION : Case No. 17-md-2804
:
APPLIES TO ALL CASES : Judge Dan Aaron Polster
:
:

HIGHLY CONFIDENTIAL

SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

- - - -

DECEMBER 13, 2018

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VIDEOTAPED DEPOSITION OF HBC SERVICE COMPANY'S

DESIGNATED 30(B)(6) REPRESENTATIVE,

JAMES TSIPAKIS,

taken pursuant to notice, was held at Marcus & Shapira,
One Oxford Center, 35th Floor, Pittsburgh, Pennsylvania
15219, by and before Ann Medis, Registered Professional
Reporter and Notary Public in and for the Commonwealth
of Pennsylvania, on Thursday, December 13, 2018,
commencing at 9:09 a.m.

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1 A. Yes. Sorry, yes.

2 Q. Who at the warehouse was aware of the
3 ordering patterns?

4 A. So the warehouse had a superintendent of
5 the warehouse. There was specialized, highly
6 trained individuals that worked the controlled
7 substance cage that were the same folks that
8 picked the orders day in and day out.

9 Q. From 2009 until October 2014, was there
10 one superintendent of the warehouse, or were there
11 multiple?

12 A. I believe there was one.

13 Q. And who was that?

14 A. Walter Durr.

15 Q. So you said below Walter, there would
16 have been I think what you referred to as pickers?

17 A. Folks who would fulfill the orders, yes.

18 Q. In laymen's terms, can you describe to
19 me what a picker does?

20 A. Sure. An order comes in. And for
21 whatever product they need to get, they go to the
22 shelf, the particular shelf in the warehouse, and
23 they pick the order.

24 Q. Is it as simple as walking to a shelf
25 and there's a bottle of pills on the shelf, and

1 Q. This is all getting back to
2 identification of suspicious orders. So my
3 question is: From HBC who had that obligation to
4 identify suspicious orders? And I think you've
5 identified Mr. Durr and these pickers. But if I'm
6 missing somebody, I want you to tell me.

7 A. So in our suspicious orders would have
8 been identified certainly from the warehouse,
9 certainly folks in corporate that were -- from the
10 procurement team buying into the warehouse. They
11 would know if there's any spike in pattern of
12 product being demanded to be shipped to the
13 warehouse, et cetera.

14 It's not just the warehouse. It's also the
15 folks that do the procurement of these products as
16 well would identify any deviation. If all of a
17 sudden they're buying X and now they're being
18 asked to buy Y, they would identify that.

19 Q. Was there any written list of items that
20 these people in procurement or people like
21 Mr. Durr, the superintendent of the warehouse,
22 were supposed to be on the lookout for?

23 A. Not that I could find.

24 Q. Was there any report that was generated
25 on a daily, weekly, monthly, yearly basis,

1 quarterly basis that Mr. Durr or these procurement
2 people could look at to evaluate the pattern of
3 orders?

4 A. I'm sorry. Can you ask that again?

5 Q. What I'm asking about is whether or not
6 there was any report that was generated daily or
7 weekly or monthly or quarterly or annually that
8 was kind of on a set basis distributed to anybody,
9 whether it's Mr. Durr, whether it's these people
10 from procurement, whether it's the pickers, to
11 where they can have an opportunity to look at and
12 review the pattern of orders going to each of the
13 different pharmacies.

14 A. Not that I could find specifically, but
15 certainly from the procurement side, et cetera,
16 there's reports of what they're buying and
17 selling, sure.

18 Q. Explain to me what you mean by the
19 procurement side.

20 A. So from the procurement side, the folks
21 in the warehouse don't do purchasing. There's a
22 group that does purchasing. So those folks that
23 do purchasing would absolutely know what's being
24 bought and what's being sold.

25 Q. And who were those folks from 2009

1 A. Yes.

2 Q. I think you said that at some point in
3 time, there was a threshold program implemented?

4 A. Yes.

5 Q. When did HBC first start utilizing a
6 threshold program?

7 A. A threshold program with some IT
8 enhancements were put into place roughly in 2013.

9 Q. Do you know what month in 2013 or season
10 even?

11 A. I don't recall exactly in 2013.

12 Q. And were thresholds set for every
13 prescription drug or just controlled substances?

14 A. Controlled substances.

15 Q. And that included Schedule III
16 controlled substances?

17 A. Yes.

18 Q. How were thresholds established? Let me
19 back up before you answer that. I'm making an
20 assumption that threshold is a monthly ordering
21 threshold. Am I wrong on that?

22 A. So the threshold established was using
23 diligence that was ascertained at the time from
24 DEA that a 3X threshold to be established, a
25 monthly threshold, to your point, using 12 months

1 of trailing data, 3X the average for that month.

2 Q. Let me say it back to you to make sure I
3 understand it. This threshold program which was
4 first begun in 2013 set a threshold at 3 times the
5 average amount of that substance that was
6 distributed over the last 12 months?

7 A. So 3X the company average for that
8 chemical. So it was at the GPI level. So the
9 chemical would include all the drugs having that
10 chemical in it, 3X using 12 months of trailing
11 data, 3X the company average for that chemical,
12 that product.

13 Q. So you explained two things there.
14 First of all, it was based on the chemical?

15 A. GPI level, yes.

16 Q. Does that mean that Lortab and Vicodin
17 don't get different thresholds. They're all under
18 the same threshold?

19 A. It's all lumped together as one
20 threshold.

21 Q. Because that's the same combination of
22 hydrocodone and acetaminophen?

23 A. It's looking at the active ingredient,
24 yes.

25 Q. As far as how the threshold is set, if

1 HBC had sold a hundred HCP products over a month
2 for the last 12 months, the threshold for the next
3 month would have been 300; is that fair?

4 A. Well, the threshold was -- yes. Let me
5 just play that back. So it would be 3X again at
6 the GPI level of that GPI using the 12 months
7 worth of data, yes.

8 Q. So months 1 through 12 Giant Eagle
9 pharmacies had ordered 100 hydrocodone combination
10 products?

11 A. All included.

12 Q. Correct. Then in month 13 the threshold
13 would be 300?

14 A. Well, it uses the average of the 12
15 months of data. When the new month comes on, the
16 furthest out drops off. It's a rolling 12 months
17 worth of data, yes.

18 Q. But I have that math right, in month 13,
19 the threshold would be 300 because the prior 12
20 months, the average was 100?

21 A. But again, it uses the last 12 months.
22 So assuming that it was a hundred all those
23 months, it would be 3X which would be 300, yes.

24 Q. You said it was a rolling system. So at
25 the 13th month, instead of HBC distributing a

1 hundred HCPs and it distributed 200, the threshold
2 for the 14th month would be different. It would
3 not be the same 300 because that last month would
4 have affected the average; correct?

5 A. Each datapoint adds to the average. And
6 certainly the reason for that is there's
7 seasonality in our business as well where products
8 change over time, yes. The demand for products
9 change over time.

10 Q. When you say seasonality, do you mean
11 different times of years or do you mean --

12 A. Yes. Different times of year, cough and
13 cold season versus summer months, yes.

14 Q. Is there a hydrocodone combination
15 product season?

16 A. Well, certainly hydrocodone products in
17 cough syrups, it is more prevalent during cough
18 and cold season than it is during summer months.

19 Q. I think I heard you mention that HBC
20 received guidance from the DEA that a 3 times
21 average was an appropriate threshold.

22 A. What I said is during the due diligence
23 to set the threshold, information was derived from
24 the DEA published websites on a 3X threshold that
25 they used for list chemicals, and that's where our

1 3X number was derived from.

2 Q. You're talking about the chemical
3 handler's manual?

4 A. From what I -- to prepare for this, it
5 was based on written DEA inference on a website or
6 a manual, I'm not sure where it was derived from,
7 but the DEA itself was establishing a 3X
8 threshold, and the team adopted that rationale.

9 Q. Are you testifying that the DEA had
10 suggested a 3X threshold for opioids?

11 A. I'm testifying that the HBC warehouse
12 and the team involved found data that pointed to a
13 3X threshold tier, and that's what they adopted.

14 Q. But for opioids. That's my question.
15 Are you testifying that HBC had information from
16 the DEA that they were approving or ratifying or
17 blessing, whatever verb you want to use, a 3X
18 threshold in 2013 for opioids?

19 A. No. That is not what I'm saying.

20 Q. Then help me understand.

21 A. What I'm saying is in the diligence to
22 set the threshold, Giant Eagle inferred from
23 information that they gleaned from the website, a
24 manual, whatever it was, that established a 3X
25 threshold is where they want -- the DEA was -- the

1 DEA over the years has not been clear about what
2 their expectations were of any threshold.

3 So it left each registrant to set whatever
4 parameters and controls that they deemed
5 appropriate. So our team used whatever they could
6 find that was reasonably available and reasonable
7 to set our thresholds.

8 Q. The DEA never told HBC that a three
9 times average was appropriate; correct?

10 A. Directly, no, never.

11 Q. Did DEA indirectly tell HBC that a three
12 times average was appropriate?

13 A. What I'm saying is the HBC set its
14 threshold based on information that it gleaned
15 from a DEA -- just like you showed me earlier, a
16 page from the DEA website. There was information
17 that they used from DEA and inferred to use a 3X
18 threshold.

19 HBC set the threshold, but it wasn't just
20 some arbitrary number they picked. There was
21 information they used to get to a 3X threshold.

22 Q. I'll show you what I'll mark as No. 13.

23 (HBC-Tsipakis Exhibit 13 was marked.)

24 BY MR. GADDY:

25 Q. I'm showing you a June 2, 2012 letter

1 requirement or procedure in place to do any
2 maintaining or logging of any type of due
3 diligence or investigatory type efforts to clear
4 or justify orders that were received that may be
5 over thresholds or may be otherwise indicative of
6 diversion?

7 A. Yes. Over time more systems were
8 developed and abilities, yes.

9 Q. When did Giant Eagle or HBC put in place
10 a system that required employees to log or
11 maintain files that explained why particular
12 orders were cleared or not cleared?

13 A. I can say from the diligence I had in
14 early 2017, a system was developed where
15 investigative notes and information could be
16 entered regarding orders that we wanted to look
17 at, orders of interest.

18 Q. Prior to early 2017, HBC nor Giant Eagle
19 had any system that was dedicated to maintain
20 notes, reports or memos that would explain or
21 justify why particular orders were cleared or not
22 cleared?

23 A. We didn't have a repository if that's
24 what you're asking. There were certainly
25 definitive emails to the field, emails to the

1 warehouse, things of sorts that clearly show a
2 diligence of trying to run the ground on why an
3 order happened or what triggered, sure.

4 Q. Can you say that that's the case for
5 every order that ever popped up on one of these
6 reports?

7 A. I can say after reviewing and talking to
8 associates involved and folks that do report to
9 me, that every order that pops up of interest is
10 investigated and either cleared or not.

11 Q. But you can't tell me as you sit here
12 today whether or not there's any documentation to
13 prove or disprove whether or not any or all of
14 those investigations actually happened?

15 A. I can tell you that I don't know that I
16 have specific for each line item on -- well, from
17 2017 on, I can tell you we have a repository that
18 was built. Prior to that, I cannot.

19 Q. That's probably the easiest way to do
20 this. Prior to early 2017, Giant Eagle nor HBC
21 had any repository or location, whether it's
22 physical or digital, to maintain any type of due
23 diligence reports or efforts; correct?

24 A. There was no central repository.
25 Certainly if there was folders or emails or things

1 BY MR. GADDY:

2 Q. Does HBC agree that orders are not
3 supposed to be shipped to the pharmacies until
4 they have been deemed not suspicious?

5 MR. BARNES: Object to form.

6 You can answer.

7 THE WITNESS: Again, in our system,
8 since we have line of sight from the warehouse all
9 the way out to the dispensing level, our
10 pharmacists are filling prescriptions pursuant to
11 legitimate prescriptions, which then generate
12 orders, and we ship those orders to the
13 pharmacies.

14 BY MR. GADDY:

15 Q. My question is more about timing of the
16 shipping. So we looked at some of these threshold
17 or we looked at one of these threshold reports.
18 And the reports indicate on their face that orders
19 of pills that exceeded the threshold were shipped
20 to the stores that were in excess of the
21 threshold. And you told me that after the reports
22 are generated, they're looked at, and then some
23 level of investigation is done; is that correct?

24 A. Correct.

25 Q. You agree with me that any investigation

1 that was being done by Giant Eagle or HBC is
2 happening after the orders have been shipped;
3 correct?

4 A. Perhaps, yes, perhaps.

5 Q. Well, that's what the forms indicate;
6 correct?

7 A. Well, some of them -- obviously looking
8 at some of these -- you mentioned this report is
9 on the 31st of the month. So if you look at some
10 of these, as I testified earlier, some of these
11 would have already been cleared and some of them
12 you could already tell that there would be a false
13 positive.

14 So some of them you would have known -- you
15 would have known that -- you would have cleared
16 them early is what I'm trying to say knowing that
17 they were a false positive.

18 Q. But by the time the procurement folks
19 see this report, the pills have already been
20 shipped; correct?

21 A. They may have. The report -- the report
22 generates early in the morning. Stores don't
23 receive their orders till after they open. So
24 they would have been shipped, but not received in
25 some cases, in transit.

1 Q. Break that down for me. You state the
2 reports are generated early in the morning. What
3 does that mean?

4 A. I'm not sure of the exact time, but
5 certainly before our pharmacies open for business.

6 Q. What time do your pharmacies open for
7 business?

8 A. Some open at 9:00. Some open at
9 8:00 generally.

10 Q. Let me just ask it this way. Did HBC or
11 Giant Eagle have any policy in place that any
12 orders that popped on the threshold report were
13 not shipped until they've been cleared?

14 A. Not that I could find a policy.

15 Q. They're still operating under the
16 threshold policy today. Today are these orders
17 shipped or are they blocked merely because they
18 come up on the report, or are they shipped and
19 then the diligence is performed?

20 A. So in our experience, having looked at
21 reports having looked at thresholds, we generated
22 very few suspicious orders over the timeframe that
23 we've been operating. So I guess I'm trying to
24 understand.

25 In our environment, we're able to intercept,

1 retrieve, quarantine product all the way up to the
2 time it gets to the store, after it lands at the
3 store, when in transit with the truck. So we're
4 able to intercept -- the change of title never
5 happens. Giant Eagle owns the product. Giant
6 Eagle ships the product. Giant Eagle receives the
7 product at the stores. So I guess I'm just trying
8 to follow your question.

9 Q. Frankly, I'm trying to following your
10 answer. Because I said they're shipped before the
11 investigation happened, and your answer was, well,
12 the reports are generated early in the morning and
13 the pharmacies don't open until 8:00 or 9:00, so
14 maybe they haven't gotten there yet.

15 So my question is whether or not the orders
16 are shipped, whether or not there's a policy or a
17 rule, a procedure, that requires the orders to not
18 be shipped until somebody from procurement looks
19 at it and says, oh, that's a false positive, oh,
20 there's a justification for that.

21 Is there a policy, procedure or rule in place
22 that does such?

23 A. No.

24 Q. You mentioned just a few minutes ago
25 that I guess because you're shipping to your own

1 stores, I think the phrase you used was the title
2 never changes.

3 So what I'm asking about, are you aware of
4 instances where you've had to turn the truck
5 around and bring it back to the distribution
6 center because there's pills didn't need to go to
7 that store?

8 A. In our history, we've only had very few
9 suspicious orders, so we haven't had an instance
10 where we needed to grab an order back.

11 Q. You mentioned that you could go to a
12 store or quarantine an order at a store. Has
13 there ever been an instance that you're aware of
14 where HBC or Giant Eagle has had to call the store
15 and tell them, don't open that tote, put that to
16 the side, we got to come, get it back from you
17 because that order shouldn't have been shipped?

18 A. We haven't, but we've had instances
19 where we've shut off stores in the cases we've had
20 on our suspicious orders, shutting off stores from
21 being able to order any more product, either from
22 us or from our other wholesaler, our commercial
23 wholesaler. So steps quickly can be put into
24 place.

25 Q. And I'm going to ask you about the

1 history of suspicious order reports in just a
2 second. So we'll get into that into a little bit
3 of detail. You don't remember any times where you
4 had to turn a truck around, don't remember any
5 times where you had to call a pharmacy and ask
6 them to put a tote to the side and not open it;
7 that hasn't happened?

8 A. Not that I've seen in what I've looked
9 at.

10 Q. So every time that orders have been
11 flagged or popped on this threshold report going
12 back to 2013, they've always been shipped, and
13 they've never been brought back?

14 A. As far as I can tell, no.

15 Q. From 2013 till we sit here today, every
16 order that's ever popped on HBC's or Giant Eagle's
17 threshold report as being over threshold has
18 always been shipped, has never been reported to
19 the DEA and has never been brought back?

20 MR. BARNES: Wait a minute. Object to
21 form.

22 BY MR. GADDY:

23 Q. Is that correct?

24 MR. BARNES: This is one report with a
25 hundred --

1 MR. GADDY: That's all I'm asking. I'm
2 asking him the question, not you.

3 MR. BARNES: Don't trick him.

4 THE WITNESS: Can you ask the question
5 again, please?

6 BY MR. GADDY:

7 Q. 2013 through today, have there ever been
8 any controlled substances that have been flagged
9 on this report that have not been shipped to the
10 stores?

11 MR. BARNES: Object to form.

12 THE WITNESS: The orders that have been
13 flagged on this report were received by the
14 stores, is that your question?

15 BY MR. GADDY:

16 Q. I think you answered my question.

17 So every report -- every entry that's flagged
18 here on this report was sent to the stores;
19 correct?

20 A. Every entry on these stores, none of
21 them were flagged as suspicious. They were all
22 investigated and cleared.

23 Q. And that's fine if that's what the
24 answer is. I'm just trying to make sure that's
25 clear.

1 A. That is the answer. I'm telling you
2 what happens.

3 Q. Going back to 2013, as we sit here
4 today, every item that's showing up on this report
5 has been investigated and cleared?

6 A. Yes.

7 Q. From 2009 until 2014 -- here I'm only
8 asking about HBC; I'm not asking about the new
9 Giant Eagle distribution center -- do you have any
10 understanding of how many orders for hydrocodone
11 combination products HBC received from Giant Eagle
12 pharmacies?

13 A. I'm sorry. One more time. 2009 to
14 2014?

15 Q. Sure. I'm only asking about HBC. I'm
16 not asking about the Giant Eagle facility.

17 Do you have an understanding as to how many
18 orders for hydrocodone combination products HBC
19 received from Giant Eagle pharmacies?

20 A. How many orders HBC -- I'm sorry. I'm
21 just trying to follow. How many orders HBC
22 received?

23 Q. Correct.

24 A. From Giant Eagle pharmacies?

25 Q. Correct.

1 A. Yes.

2 Q. Can you just briefly summarize those for
3 us?

4 MR. GADDY: Objection to form.

5 THE WITNESS: Certainly there was a lot
6 of pop-up pharmacies on the internet that the DEA
7 was cracking down on and certainly there wasn't a
8 valid patient/prescriber relationship, and the DEA
9 had ramped up regulatory efforts against those to
10 curb them or shut them down.

11 BY MR. BARNES:

12 Q. Did HBC or Giant Eagle at any time ever
13 supply an internet pharmacy at any time?

14 MR. GADDY: Objection to form.

15 THE WITNESS: No.

16 BY MR. BARNES:

17 Q. Now, with respect to the physical
18 structure of the HBC warehouse, did you have a
19 locked cage?

20 A. Yes.

21 Q. Was there controlled access to that
22 locked cage?

23 A. Yes.

24 Q. Was that locked cage inspected and
25 approved by the DEA?

1 A. Yes.

2 Q. Was admittance to the locked cage
3 limited to only certain personnel?

4 A. Yes.

5 Q. Was there limited entry for the number
6 of personnel?

7 A. Yes.

8 Q. What was that number, do you recall?

9 A. Three or four individuals only.

10 Q. Were they using any type of digital
11 inventory system with scanners and wrist bands and
12 things of that nature while they were inside the
13 controlled substance locked area?

14 A. Yes.

15 Q. Do you know the name of that system?

16 A. I believe Volcom. I think it's Volcom.

17 Q. Can you spell that, please?

18 A. V-O-L-C-O-M.

19 Q. And is that system a form of a perpetual
20 inventory system?

21 A. Yes.

22 Q. Is that a type of internal control at
23 the warehouse?

24 MR. GADDY: Objection to form.

25 THE WITNESS: Sure, yes.

1 BY MR. BARNES:

2 Q. The controlled substance orders that
3 were picked at the warehouse, the HBC warehouse,
4 were they doublechecked before shipping?

5 A. Yes.

6 Q. Were there physical safeguards to
7 prevent theft and diversion at that warehouse?

8 A. Yes.

9 Q. Even while picking the orders?

10 A. Yes.

11 Q. Can you just describe a few of them?

12 A. So there would be daily audits,
13 backcounts. The system would make sure that all
14 of the inventory would tie up.

15 Q. So if there was any product missing,
16 would it be found fairly promptly?

17 A. Oh, yes.

18 Q. Was there a daily warehouse inventory
19 for controlled substances?

20 A. Yes.

21 Q. Were there security guards and cameras
22 throughout the facility?

23 A. Yes, multiple.

24 Q. Besides the daily inventories, were
25 their yearly inventories and biannual DEA

1 inventories?

2 A. Yes.

3 Q. Was the warehouse overseen by the Giant
4 Eagle audit and accounting department?

5 A. Sure, yes.

6 Q. You were asked a lot of questions about
7 due diligence performed in the 2009 to 2013 time
8 period. In fact, Exhibit 12 you were shown a few
9 minutes ago and you were asked whether you could
10 identify specific investigations for line items on
11 these reports.

12 Do you recall those questions?

13 A. Yes.

14 Q. How many transactions like that are we
15 talking about in any given -- any given month and
16 year?

17 A. Thousands, millions, many items.

18 Q. And you can't remember every one of
19 them?

20 A. No.

21 Q. And you didn't attempt to memorize every
22 one of them in preparation for your deposition?

23 A. No.

24 Q. Have you ever heard of the term CSOS
25 ordering system?

1 A. Yes.

2 Q. Is that something that was used for the
3 warehouse facilities?

4 A. Yes.

5 Q. When did that program start being used?

6 A. I believe 2015.

7 Q. Does that program have the ability to
8 stop an order if it exceeds a threshold?

9 A. Yes.

10 Q. Are you familiar with the Supply Logic
11 software program?

12 A. Yes.

13 Q. Is that another program that Giant Eagle
14 used at these warehouses?

15 A. Yes.

16 Q. And what did that allow Giant Eagle or
17 the warehouses to do?

18 A. It would allow for us to see the ins and
19 outs of inventory and flag anything that had any
20 risk or things to look at out of the ordinary.

21 Q. Is that a form of an internal control?

22 MR. GADDY: Objection to form.

23 THE WITNESS: Yes.

24 BY MR. BARNES:

25 Q. Was that part of the overall security

1 system that HBC considered when it was trying to
2 comply and complying with the security
3 requirement?

4 MR. GADDY: Objection to form.

5 THE WITNESS: Yes. More further, they
6 would look at patterns. They would look at pretty
7 holistically the patterns and any deviations.

8 BY MR. BARNES:

9 Q. You're a pharmacist; is that correct?

10 A. Yes.

11 Q. What kind of degrees in pharmacy do you
12 have?

13 A. Bachelor of science in pharmacy.

14 Q. And were you a practicing pharmacist in
15 a store for a period of time?

16 A. Yes.

17 Q. Was that for a different chain,
18 Albertsons?

19 A. Yes.

20 Q. Are you familiar with dispensing
21 practices and things of that nature?

22 A. Yes.

23 Q. In your direct testimony upon
24 questioning by Mr. Gaddy, you referenced this
25 integrated control system, and you referenced

1 three parts to it, at the warehouse, at corporate
2 and at the stores. Do you recall that testimony?

3 A. Yes.

4 Q. At the stores are there internal
5 controls over controlled substances?

6 A. Sure, yes.

7 Q. Are there physical controls over
8 controlled substances?

9 A. Yes.

10 Q. Does that include vaults -- I'm sorry --
11 not vaults, but safes and things of that nature?

12 A. Locked cabinets and safes, yes.

13 Q. And who's allowed access to those locked
14 cabinets and safes?

15 A. Only the pharmacist.

16 Q. Does Giant Eagle have a mechanism to
17 train pharmacists to keep tight control over
18 controlled substances?

19 A. Yes.

20 Q. And is that monitored by loss prevention
21 and internal audit?

22 A. Yes.

23 Q. And are pharmacists and pharmacy techs
24 trained and supervised?

25 MR. GADDY: Objection to form.

1 THE WITNESS: Yes.

2 BY MR. BARNES:

3 Q. Does Giant Eagle at the store level
4 impose policies and procedures on the pharmacists
5 and the pharmacy techs with respect to dispensing
6 prescriptions?

7 A. Yes.

8 Q. Are you familiar with the DEA pharmacist
9 manual?

10 A. Of course, yes.

11 Q. Is that something that's kept at every
12 Giant Eagle pharmacy?

13 A. Yes.

14 Q. And are the pharmacists required to
15 review it and sign off on it?

16 A. Yes.

17 Q. Does Giant Eagle have controlled
18 substance dispensing guidelines?

19 A. Yes.

20 Q. Do those guidelines include red flags,
21 things to watch for in terms of whether a
22 prescription is legitimate or not?

23 A. Yes.

24 Q. And are they required to review those
25 and sign off that they've been trained on it and

1 understand them?

2 A. Yes.

3 Q. And are all of Giant Eagle's pharmacists
4 licensed pharmacists with experience?

5 MR. GADDY: Objection to form.

6 THE WITNESS: Yes.

7 BY MR. BARNES:

8 Q. Are there other manuals containing
9 policies at the store level related to controlled
10 substance other than the DEA pharmacist manual and
11 the controlled substance dispensing guidelines?

12 A. Yes.

13 Q. And do those policies include controls
14 over all controlled substances?

15 A. Yes.

16 Q. Do the stores interface with any
17 statewide systems to make sure that incoming
18 prescriptions are legitimate?

19 A. Yes.

20 Q. In the state of Ohio, is there a name
21 for that system?

22 A. Sure. It's the prescription drug
23 monitoring program, the OARRS program.

24 Q. And is that something that the
25 pharmacists are trained to consult?

1 A. Yes.

2 Q. Will that provide some information about
3 things like doctor shopping and people coming in
4 from out of state, things of that nature?

5 MR. GADDY: Objection to form.

6 THE WITNESS: Yes.

7 BY MR. BARNES:

8 Q. And do Giant Eagle pharmacists use that
9 system?

10 A. Regularly, yes.

11 Q. Is the activity at the store level
12 reported to the DEA in terms of prescriptions
13 filled?

14 A. Yes, yes.

15 Q. Is the DEA -- does the DEA from time to
16 time visit the stores?

17 A. Sure, yes.

18 Q. Do they perform surprise audits and
19 things of that nature?

20 MR. GADDY: Objection to form.

21 THE WITNESS: Audits or if they're
22 coming in for investigations or other things that
23 they're working on, sure, yes.

24 BY MR. BARNES:

25 Q. Do of the boards of pharmacy of the

1 states also interface with the stores?

2 A. Yes.

3 Q. Does the Ohio Board of Pharmacy
4 interface with the Giant Eagle stores in these two
5 counties at issue?

6 MR. GADDY: Objection to form.

7 THE WITNESS: Yes.

8 BY MR. BARNES:

9 Q. Do they perform surprise audits and
10 inspections?

11 MR. GADDY: Objection to form.

12 THE WITNESS: Absolutely, yes.

13 BY MR. BARNES:

14 Q. To your knowledge, has there ever been a
15 problem raised by the DEA or the Ohio Board of
16 Pharmacy related to any of the Giant Eagle
17 pharmacies in these two jurisdictions?

18 MR. GADDY: Objection to form.

19 THE WITNESS: Not to my knowledge, no.

20 BY MR. BARNES:

21 Q. Are there controls over incoming orders
22 into the stores, including orders from the other
23 distributors? McKesson, I guess, was the main
24 distributor of controlled substance IIs for this
25 time period; is that correct?

1 A. Correct.

2 Q. And when those came into the stores,
3 were there special procedures over those incoming
4 orders?

5 A. Yes.

6 Q. Were they treated differently than other
7 incoming orders?

8 A. Absolutely, yes.

9 Q. Give us some samples of that.

10 A. So those orders would need to be checked
11 in by a pharmacist, signed off on the pharmacist.
12 Right away when the couriers would drop off, it's
13 the expectation that the pharmacist would -- it
14 would be segregated. They come in different totes
15 and they're handled differently. And any
16 discrepancies are immediately noted or called in.

17 Q. Is the pharmacist required to
18 immediately input -- update the store's controlled
19 substance inventory for incoming orders?

20 A. Their onions?

21 Q. Yes.

22 A. Yes.

23 Q. And when controlled substance
24 prescriptions are filled, is the inventory, the
25 store inventory immediately credited for the

1 outgoing prescription?

2 A. Yes.

3 Q. At the end of the day, is there a check
4 of the remaining balance of controlled substances
5 at the store?

6 A. Yes, and especially even more so on
7 CIIIs. They're backcounted on every fill.

8 Q. What does it mean to backcount every
9 fill?

10 A. The system will prompt for how many
11 pills are left in the bottle. So if you had a
12 hundred pills to start and you filled 50, you
13 would expect to have 50 left in that bottle. So
14 the backcount would be to ensure that you had 50
15 left in that bottle and inputting that that you do
16 have, in fact, 50.

17 Q. Are you familiar with the term monthly
18 narc audit?

19 A. Yes.

20 Q. What is that?

21 A. The requirement that all of our
22 pharmacies do a full inventory of CII narcotics in
23 our stores and some other products as well, not
24 just can CIIIs, but some CIIIs.

25 Q. So you have the daily perpetual

1 inventory and the monthly narc audits?

2 A. Yes.

3 Q. You also have the annual audits or
4 inventories of controlled substances at every
5 store?

6 A. The DEA requires an biannual inventory.
7 We do an annual inventory on top, yes. We do a
8 yearly inventory instead of biannual.

9 Q. Can you tell us what a PDL is?

10 A. PDL is a pharmacy district leader.

11 Q. And what do they do?

12 A. They supervise the stores. They're
13 basically a district manager that oversees the
14 stores for all aspects of ensuring Pharmacy
15 Practice Act, DEA, company policy. They're the
16 oversight for the stores, direct oversight for the
17 stores.

18 Q. Do they regularly visit the stores?

19 A. Yes.

20 Q. Do they conduct audits or inquiries
21 concerning their procedures and things of that
22 nature?

23 A. They do audits. We also have an
24 internal audit that quarterly visits the stores
25 for a myriad of things, but yes.

1 Q. Is there any supervision of training of
2 pharmacists?

3 A. Yes.

4 Q. Is that something a PDL does?

5 A. A PDL would definitely make sure any
6 training that needs to be done or computer-based
7 training is completed, and if there's any
8 remediation that's needed, that's their job to
9 make sure.

10 Q. Do the stores work with local law
11 enforcement, police, board of pharmacy inspectors,
12 DEA agents?

13 A. Oh, yes, all the time.

14 MR. GADDY: Objection to form.

15 BY MR. BARNES:

16 Q. Is that cooperative working
17 relationship?

18 MR. GADDY: Objection to form.

19 THE WITNESS: Very much so, yes.

20 BY MR. BARNES:

21 Q. In working with local law enforcement
22 and DEA, have you been able to uncover people
23 attempting to pass bad scripts, things of that
24 nature?

25 A. Yes.

1 Q. Is there a pharmacy investigator?

2 A. Yes.

3 Q. Who is that?

4 A. Rick Shaheen.

5 Q. If how much experience does he have?

6 A. He has a lot of experience. He has a
7 background in law enforcement, attorneys general's
8 office, a very -- has a lot of contacts with DEA,
9 boards of pharmacy. So he's been -- he's been in
10 the business a long time.

11 Q. Does he spend a lot of time in the
12 stores?

13 MR. GADDY: Objection to form.

14 THE WITNESS: Yes.

15 BY MR. BARNES:

16 Q. Does he also work individually with
17 local law enforcement and DEA?

18 A. Yes.

19 Q. Are you familiar with the term or the
20 acronym BOLO, B-O-L-O?

21 A. Yes.

22 Q. What is it?

23 A. Be on the lookout for. So he will send
24 out bulletins to the pharmacists when either law
25 enforcement will tell him that there's bad scripts

1 on the street or a prescription pad, for example,
2 if it's stolen or something, either if we have
3 information -- so Rick is involved with -- Rick
4 and Andrew, who work for Rick, are involved with
5 all of those activities and alert our stores as
6 soon as they know something and we disseminate
7 very quickly to all our stores.

8 Q. And is that the type of information
9 that's also in the OARRS database, or is that
10 different?

11 MR. GADDY: Objection to form.

12 THE WITNESS: Different.

13 BY MR. BARNES:

14 Q. Are there daily counts of certain drugs?

15 A. Yes.

16 Q. Does that include HCP, hydrocodone, or
17 HCP products?

18 A. Yes.

19 Q. Is there an electronic prescription
20 system with perpetual logs at the stores?

21 A. Yes.

22 Q. Is that a form of internal control?

23 A. Yes.

24 Q. Is there diversion training for pharmacy
25 employees on a yearly basis?

1 MR. GADDY: Objection to form.

2 THE WITNESS: Yes.

3 BY MR. BARNES:

4 Q. Now, you were asked a lot of questions
5 about so-called suspicious orders. And I didn't
6 hear a lot of questioning about diversion.

7 Do you understand the term diversion?

8 MR. GADDY: Objection to the question,
9 form of the question.

10 THE WITNESS: Yes.

11 BY MR. BARNES:

12 Q. What does the term diversion mean to
13 you?

14 A. Diversion, theft, loss, things being
15 routed to folks that shouldn't have access to the
16 drugs or prescriptions.

17 Q. If an order is suspicious, does that
18 mean it was diverted?

19 MR. GADDY: Objection to form.

20 THE WITNESS: No, not necessarily, no.

21 BY MR. BARNES:

22 Q. In fact, what has HBC's and Giant
23 Eagle's experience been with respect to so-called
24 suspicious orders or flagged orders? Have they
25 resulted in uncovering diversion?

1 MR. GADDY: Objection to form.

2 THE WITNESS: No.

3 BY MR. BARNES:

4 Q. What happens to -- you were asked
5 questions on Exhibit 15 of these 10 million dosage
6 units in Cuyahoga County. What happened to those
7 10 million units? Where did they go?

8 MR. GADDY: Objection to form.

9 THE WITNESS: Assuming those were the 10
10 million units that we dispensed out of HBC, they
11 were dispensed to patients that were pursuant --
12 on a valid prescription.

13 BY MR. BARNES:

14 Q. And how about the dosage units that went
15 out to Summit County presuming that these numbers
16 are correct?

17 MR. GADDY: Same objection.

18 THE WITNESS: The same. Every single
19 one of them would have been dispensed pursuant to
20 a prescription by a licensed practitioner for
21 those patients.

22 BY MR. BARNES:

23 Q. In your direct questioning today, were
24 you shown at any time any evidence, any document,
25 any piece of paper by plaintiffs' counsel

1 suggesting that any single one of these
2 prescriptions was anything other than a legitimate
3 prescription issued by a doctor who had a
4 legitimate license to issue it?

5 MR. GADDY: Objection to form.

6 THE WITNESS: No.

7 BY MR. BARNES:

8 Q. Were you shown any evidence at any time
9 that any of these prescriptions caused anybody any
10 harm at any time in any jurisdiction?

11 MR. GADDY: Objection to form.

12 THE WITNESS: No.

13 BY MR. BARNES:

14 Q. Did the DEA at any time inform HBC or
15 Giant Eagle that it was required to keep records
16 of every call, every conversation that was made
17 with respect to following up on orders of
18 interest?

19 MR. GADDY: Objection to form.

20 THE WITNESS: No.

21 BY MR. BARNES:

22 Q. Did HBC and Giant Eagle keep those
23 records and emails in other types of files?

24 A. Yes.

25 Q. Is Giant Eagle's integrated system

1 designed to maintain the integrity of the closed
2 system of distribution from incoming at the
3 warehouse to outgoing at the stores?

4 A. Yes.

5 MR. GADDY: Objection to form.

6 BY MR. BARNES:

7 Q. The system that was designed by Giant
8 Eagle, did you expect it to ever produce a
9 suspicious order?

10 MR. GADDY: Objection to form.

11 THE WITNESS: No.

12 BY MR. BARNES:

13 Q. Before you had the threshold-based
14 system, you've already testified, I think, there
15 was one suspicious order?

16 A. Yes.

17 Q. And after you had the threshold-based
18 system, you had one suspicious order?

19 A. One more, yes.

20 Q. What does that tell you?

21 MR. GADDY: Objection to form.

22 THE WITNESS: That we had adequate
23 controls from the beginning. Adding more layers
24 of controls didn't materially change the outcome
25 of the system we had in place.

1 Q. You mentioned the pharmacy investigator,
2 Rick Shaheen; correct?

3 A. Yes.

4 Q. Does Mr. Shaheen have any training or
5 education in detecting or identifying suspicious
6 orders of controlled substances that would come
7 from pharmacies?

8 A. Having met Mr. Shaheen and spending time
9 with Mr. Shaheen and looking at his very diverse
10 background, I feel he's absolutely qualified to do
11 investigations to support our operation, yes.

12 Q. I'm not questioning his qualifications
13 as a law enforcement officer or as a pharmacy
14 investigator. What I'm asking is a little bit
15 different.

16 I'm asking whether or not you're aware of him
17 having any training or experience or education as
18 it relates to HBC's duty under the Controlled
19 Substance Act to design and operate a system to
20 detect suspicious orders.

21 A. That I do not know, no.

22 Q. We agree that HBC was under no
23 obligation to utilize a threshold system in 2013;
24 correct?

25 A. Correct.

1 Q. But HBC chose to do so; correct?

2 A. As one level of control, yes.

3 Q. And this was touched on a little bit
4 earlier, but I think with me you indicated that
5 the original methodology was flawed and was a
6 system that could produce false positives;
7 correct?

8 A. Certainly. When you do an average, yes,
9 it's possible, yes.

10 Q. Then you also were asked after lunch
11 whether or not that same system could produce
12 false negatives, and you agreed that was also a
13 possibility; right?

14 A. Possible, yes.

15 Q. I might get these numbers wrong, but I
16 believe the example you gave to me when I was
17 asking questions this morning was that you had
18 some pharmacies that wrote 6000 scripts per month,
19 and you had some pharmacies that wrote 300 scripts
20 per month.

21 A. If you mean dispense, yes, but that's
22 not just controlled substances. That's total
23 prescriptions. But yes.

24 Q. Sure. So just like I think the example
25 you pointed out or maybe one of your higher volume